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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,734	01/17/2001	Paula Ann Johnson	J3509(C)	6621

201 7590 09/22/2003

UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
EDGEWATER, NJ 07020

EXAMINER
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PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

18

DATE MAILED: 09/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/764,734

Applicant(s)

JOHNSON ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1 and 3-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,3,4,6-16,18,19 and 21-25 is/are rejected.
- 7) ☐ Claim(s) 5,17,20,26 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Response to Amendment***

Applicant's arguments filed 6/26/03 have been fully considered but they are not persuasive.

I. Rejection of claims 1,3,4,7,8,10-13,15,18.21,23 under 35 USC 103(a) over Voss on record will be maintained for reasons on record and reasons as follows. Applicant argues that Voss would not have included an organic material that is a solvent for the chelator/amine mixture. Applicant argues that all of Voss's amine oxides are solids and would therefore be unsuitable for use as solvents. Examiner argues no where in the instant claims does the Applicant indicate a liquid antimicrobial composition. Applicant simply states that the composition is a solution which indicates that the composition is a homogenous mixture whether it be a liquid or solid. Solid composition can be solutions (homogenous mixtures). In a claim to a composition a statement of intended use with respect to a component of the composition has no patentable significance. Therefore, whether the amine oxide functions as a solvent or in some other capacity is insignificant.

II. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3,4,8-12,15,16,19,21-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Kraskin (US 4356190; 10/26/82). Kraskin teaches an antimicrobial composition to reduce malodor (deodorize) for use on the outer surface of the human body or on apparel (clothing, tampons) worn in close proximity thereto comprising carrier material (lotion, cream, gel stick) and a salt of transition metal chelator comprising a solution in an organic solvent (glycerol, ethanol) of a transition metal chelator anion (DTPA – diethylenetriaminepentaacetic acid) and an organic cation (diethanolamine). DTPA can be in the form of a sodium or potassium salt and said salt is in a concentration of at least 0.05 % wt. See column 4 lines 33-52, column 5 lines 10-40, column 6 lines 2-29, 45-50. DTPA inherently has an affinity iron (III). DTPA inherently has a binding coefficient for iron (III) greater than 10 to the power 26. The antimicrobial composition can exist in the form of an aerosol comprising a propellant. See column 5 lines 41-55. The antimicrobial composition can exist in aqueous form. See column 6 lines 45 – 54.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 6,7,14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kraskin as applied to claims 1,3,4,8-12,15,16,19,21-25. Kraskin teaches all that is recited in claims 6,7,14 except the amount of organic cation present to yield an aqueous solution of the chelator salt having a pH of between 6 and 8 and present at a level to neutralize at least 60% of the acid groups of the chelator anion. It would have been obvious to one having ordinary skill in the art to determine the optimum amount of organic cation to employ. One would have also been expected to determine the optimum ratio of liquid components to water for the composition. One would have been motivated to do this in order to develop an antimicrobial composition that would have been effective as well as non-corrosive to the skin.

***Claim Objection / Allowable Subject Matter***

Claims 5,17,20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the antimicrobial composition comprising the chelator salts of claim 5. The prior art does not teach or suggest the instant antimicrobial composition comprising a non-chlorinated propellant and an organic cationic bactericide.

***Other Matters***

Claims 26,27 are objected to for depending from cancelled claim 2.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

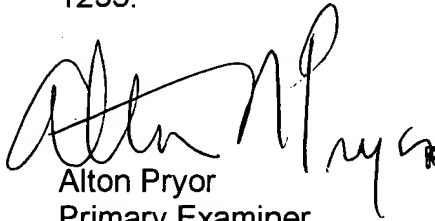
***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.

A handwritten signature in black ink, appearing to read 'Alton Pryor', is written over the printed name and title.

Alton Pryor  
Primary Examiner  
AU 1616

**ALTON N. PRYOR  
PRIMARY EXAMINER**